

Ruling 2002-07

Vermont Department of Taxes

Dated: October 24, 2002

Written By: Timothy Collins, Attorney for the Department

Approved By: Janet Ancel, Commissioner of Taxes

You have requested the Department of Taxes to issue an administrative ruling regarding the application of Vermont's Meals and Rooms Tax to sales of bottled water. The facts as submitted in your letter are as follows:

1. Your client operates various chains of restaurants throughout the United States.
2. Your client sells a variety of bottled waters to its patrons, including filtered water, spring water, and mineral water, in both carbonated and non-carbonated varieties.
3. All varieties are non-flavored.
4. The bottled water is available in sizes ranging from 500 milliliters to 1 liter.
5. The water is purchased for consumption both on and off the premises.

You have requested rulings on a variety of different questions that, in essence, can be broken down to three basic questions.

1. Is the type of bottled water that is sold relevant?
2. Does it matter whether the water is consumed on or off restaurant premises?
3. Does the size of the bottle sold have any relevance?

Vermont Meals and Rooms Tax Statutes, 32 V.S.A. § 9202 et seq., impose a tax upon the sale of all taxable meals within the State of Vermont. "Taxable meal" is defined as follows:

(10) "Taxable meal"--

(A) Any food or beverage furnished within the state by a restaurant for which a charge is made, including admission and minimum charges, whether furnished for consumption on or off the premises.

(B) Where furnished by other than a restaurant, any non-prepackaged food or beverage furnished within the state and for which a charge is made, including admission and minimum charges, whether furnished for consumption on or off the premises. Fruits, vegetables, candy, flour, nuts, coffee beans and similar unprepared grocery items sold self-serve for take-out from bulk containers are not subject to tax under this subdivision.

(C) Regardless where sold and whether or not prepackaged:

- (i) sandwiches of any kind except frozen;
- (ii) food or beverage furnished from a salad bar;
- (iii) heated food or beverage.

(D) "Taxable meal" shall not include:

(i) Food or beverage, other than that taxable under subdivision (10)(C) of this section, that is a grocery-type item furnished for take-out: whole pies or cakes, loaves of bread; single-serving bakery items sold in quantities of three or more; delicatessen and non prepackaged candy sales by weight or measure, except party platters; whole uncooked pizzas; pint or larger closed containers of ice cream or frozen confection; eight ounce or larger containers of salad dressings or sauces; maple syrup; quart or larger containers of cider or milk.

32 V.S.A. § 9202(10)

"Restaurant" is defined as:

(15)"Restaurant"--

(A) An establishment from which food or beverage of the type for immediate consumption is sold or for which a charge is made, including a cafe, cafeteria, dining room, diner, lunch counter, snack bar, private or social club, bar, tavern, street vendor, or person engaged in the business of catering.

(B) An establishment 80 percent or more of whose total sales of food and beverage in the previous taxable year were, or in the first taxable year are reasonably projected to be, of alcoholic beverages, food and beverage that are taxable under subdivision (10)(C) of this section, and food and beverage that are taxable under subdivision (10)(B) and are not exempt under subdivision (10)(D) of this section.

(C) "Restaurant" shall not include a snack bar on the premises of a retail grocery or "convenience" store.

(D) A vending machine is not a restaurant, but food or beverage that is sold from a vending machine shall be deemed to be sold by a "restaurant" if the vending machine is located on the premises of a restaurant.

(16) "Salad bar"--any counter, stand, table or other display of salads and other foods at which the customer may handle, cook, cut, mix or dispense in a nonpackaged state the food displayed.

(17) "Snack bar"--a counter with no seating at which prepared food is offered only for self-service.

32 V.S.A. § 9202(15)-(17).

Attached you will find a copy of a technical bulletin that addresses these terms and addresses the question of what constitutes a taxable meal. As you will notice, the major factor that must first be considered is whether the establishment that is selling an item is characterized as a restaurant. The taxability of bottled water depends on where it is sold. If it is sold by a restaurant, it is taxable. I refer you to the technical bulletin for a discussion of what constitutes a restaurant.

Vermont does not distinguish between types of bottled water for purposes of the meals and rooms tax. The term "food or beverage" is defined as "any substance used by humans for food, drink, confectionery or condiment, except alcoholic beverages" 32 V.S.A. § 9202(12). Thus it is irrelevant whether the water is filtered, carbonated, spring or mineral water. You facts presupposed that the water was for consumption. Thus it is a beverage for purposes of the meals and rooms tax. The issue of its taxability depends upon the establishment that is selling it. It would be taxable if sold by a restaurant, but nontaxable if sold by an entity other than a restaurant.

Your second issue is also directly resolved by the language of the statute. If a beverage is sold by a restaurant, then it is taxable whether it is furnished for consumption on or off of the premises. 32 V.S.A. § 9202(10)(A).

Finally, the size of the container is also not an issue. Section 9202(10)(D) is a list of foods that are exempt from inclusion in the definition of "taxable meal". The only beverages that are referenced in this list are "quart or larger containers of milk and cider". Based on the inclusion of some beverages in the exempt foods list, the Department interprets the legislative intent as meaning that the size of the container is irrelevant for other forms of beverages including carbonated sodas, non carbonated fruit drinks or teas, and bottled water. Those items are all taxable if sold by a restaurant, and nontaxable if sold by an entity other than a restaurant. Thus the size of the container is irrelevant to determining whether the water that is sold is taxable. If the water is sold by a restaurant, then the bottled water would be taxable, regardless of the size of the bottle.

In conclusion, your letter was based on the fact that the bottled water was to be sold by restaurant chains. Based on the presumption that these establishments would meet the statutory definition of a restaurant, I would have to conclude that all of the forms of bottled water that are sold by your client would be taxable under the meals and rooms tax.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of the ruling showing the proposed deletion is attached, and you may request within thirty (30) days that the Commissioner delete any further information which might tend to identify the interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

3 V.S.A. Section 808 provides that this ruling will have the same status as an agency decision or order in a contested case. You have the right to appeal this ruling within (30) days.